

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 5:09CR21-03  
(STAMP)

DARWIN DWAYNE HUTCHINS,

Defendant.

**ORDER DENYING MOTIONS TO REDUCE SENTENCE SEEKING RELIEF  
UNDER THE FIRST STEP ACT OF 2018**

The defendant in the above-styled criminal matter, Darwin Dwayne Hutchins, filed a letter motion for reduction of his sentence seeking relief under the First Step Act (ECF No. 701) as well as second motion seeking relief under the First Step Act (ECF No. 702). Subsequently, defendant filed a letter motion to appoint counsel and motion to expedite (ECF No. 705) as well as an amended motion to expedite (ECF No. 706).

This Court entered an order granting in part as framed defendant's motion to appoint counsel and appointed Brendan S. Leary, Esq., Assistant Federal Public Defender for the Northern District of West Virginia, to assist defendant in asserting an argument for reduction of his sentence pursuant to the First Step Act. ECF No. 707.

Defendant then filed a letter seeking the status of his pending motions (ECF No. 708) as well as two "amendments" to his motion to reduce sentence (ECF Nos. 710 and 711).

Defendant's appointed counsel, Brendan S. Leary, Esq., then filed a "Notice of Case File Review" in which he states he reviewed the case file in this matter in order to determine whether the defendant qualified for a reduction of sentence pursuant to the First Step Act of 2018. ECF No. 712. Counsel states that, "[a]fter reviewing all applicable pleadings and case filings, undersigned has concluded that Mr. Hutchins is not eligible for any relief under the Act." Id. Further, counsel states that upon review, he will not file a motion for reduction of sentence and adds that the defendant has been advised in writing of his conclusion. Id.

Thereafter, defendant file a letter motion styled, "USC 3582(c)(2) First Step Act of 2018 (Amendment)(Argument) Pro Se". ECF No. 714.

The United States of America, by Assistant United States Attorney Timothy D. Helman, filed a response in opposition to defendant's request for a sentence reduction, stating that defendant is not entitled to any reduction in his sentence because his conviction is not a "covered offense" under the First Step Act. ECF No. 715 at 2.

Defendant then filed a "response" to the government's response in opposition (ECF No. 716) as well as a "reply" to the government's response in opposition (ECF No. 719).

As an initial matter, this Court notes that the type of motions filed by the defendant after this Court has appointed

counsel are routinely denied as improper "hybrid motions." However, in this particular case, this Court has reviewed the numerous motions, supplements, and amendments filed by the defendant, as well as the notice of case file review filed by defendant's counsel and response in opposition filed by the government.

Upon review, this Court finds that the defendant's motions seeking relief under the First Step Act are without merit as the First Step Act makes no changes to defendant's sentence. The defendant was convicted upon his plea of guilty on March 8, 2010, of distribution of cocaine base within 1,000 feet of a protected location, in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(c) and 860, and was sentenced to 188 months in prison. The statutory penalty under 21 U.S.C. § 841(b)(1)(c) at the time of sentencing carried a maximum sentence of 20 years in prison and no mandatory minimum. This Court finds that this statutory penalty remains unchanged by the First Step Act and that the defendant is not entitled to any reduction in his sentence because his conviction is not a "covered offense" under the First Step Act.

For the reasons stated above and for reasons appearing to the Court, this Court finds that the defendant is not entitled to relief under the First Step Act. Accordingly, the defendant's motions seeking relief under the First Step Act (ECF Nos. 701, 702, 706) are DENIED.

Should the defendant choose to appeal the judgment of this Court to the United States Court of Appeals for the Fourth Circuit, he is ADVISED that he must file a notice of appeal with the Clerk of this Court within 14 days after the date of the entry of this order.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to the defendant, to defendant's counsel, Brendan S. Leary, Esq., to counsel for the United States, to the United States Probation Office, and to the United States Marshals Service.

DATED: May 1, 2019

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE